IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1894 (M/B) of 2001
(Old No. 940 of 1995)

Baldev Singh S/o Late Sri Bhaw Singh,
R/o Village Tiloth, Patti Baragarhi, Tehsil Bhatwari,
District Uttarkashi

...Petitioner

Vs

1. State of U.P. through Collector Uttarkashi
2. Pargana Adhikari, Tehsil Bhatwari, District Uttarkashi

.....Respondents

Sri Narayan Singh Negi, learned counsel for the petitioner.
Learned Standing Counsel for the State.

Dated: - July 31, 2006

Coram: Hon'ble P.C. Verma, J
Hon'ble B.S. Verma,J

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned order dated 15.1.1994 passed by Respondent No.1 which is contained in Annexure No.5 to the writ petition by which the lease of the petitioner has been cancelled.

The petitioner was granted perpetual lease of the land measuring 11 Nali 8 Muthi situated in Khasra No.1089 and 1090, Village Tiloth, P.O. Bargarhi which was inheritable land under Clause-1 of the lease agreement in exclusion of the application of the Government Grant Act as amended upto 1860. The clause-3 of the said lease provides that if the lessee fails to cultivate the land for two consecutive years, the lease shall automatically stands cancelled. The petitioner is in continuous possession over the land in dispute for more than 30 years. The aforesaid lease was granted in favour

of the petitioner 7.9.1992 by the Collector, Uttarkashi. The cancellation order of the lease of the petitioner was passed by the Collector which was communicated to the petitioner by the Deputy Collector by the impugned order dated 15.1.1994. This order was passed on the report of the S.D.M. Bhatwari in which he has stated that the petitioner was not cultivating the entire land for which the lease was granted to him.

The main ground of challenge is that before passing of the cancellation order of the lease of the petitioner, no opportunity was given to him. It is also evident that the order of cancellation has been passed before completion of two years which is in contradiction of the clause-3 of the lease agreement, therefore, the cancellation order cannot be sustained in the eye of law and is liable to be quashed.

The nature of the lease itself shows that by grant of this lease, the petitioner became *Sirdar* of the land in dispute at that time and now after addition of Section 131-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950, the petitioner has become *Bhumidhar* of the land in dispute which is equivalent to Section 10(e) of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act, 1860.

In view of the above, the impugned order dated 15.1.1994 contained in Annexure No.5 to this writ petition cannot be sustained in the eye of law and is hereby quashed. The writ petition is allowed accordingly. However, it is open for the respondents to take appropriate action in accordance with law.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang